

**DECISION**

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THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-210108

DATE: January 17, 1983

MATTER OF: Markhurd Aerial Surveys, Inc.

**DIGEST:**

1. GAO will not review an agency's affirmative determination of responsibility except when fraud or misapplication of definitive responsibility criteria is alleged.
2. Solicitation requirement that, in performing the contract, the contractor use personnel with certain minimum experience levels is not a definitive responsibility criterion, based on its wording and context within the request for quotations, but only a performance specification. Whether the awardee in fact employs personnel with the required minimum experience levels is a matter of contract administration, not for consideration by GAO.

Markhurd Aerial Surveys, Inc. protests the award of a contract by the United States Agency for International Development (AID) to Teledyne Geotronics under request for quotations (RFQ) No. 517-2003 for aerial cartographic photography in the Dominican Republic. Markhurd's sole contention is that Teledyne will be unable to perform the contract satisfactorily. Markhurd argues that Teledyne lacks experienced personnel, has performed poorly in the past, and will be forced to rely on subcontractors who themselves may not be qualified.

We dismiss the protest.

Teledyne's ability to meet its legal obligations upon acceptance of its bid involves the firm's responsibility, and Teledyne must be found responsible before it can be awarded the contract. We do not review an agency's affirmative determination of responsibility except when fraud or misapplication of definitive responsibility criteria is alleged. Ellsworth Street Associates, B-206859, June 21, 1982, 82-1 CPD 611. The reason is that responsibility determinations are normally based on the subjective business

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judgment of the procuring officials and are not readily susceptible to reasoned review. Mayfair Construction Company, 58 Comp. Gen. 105 (1978), 78-2 CPD 372.

Only one of the specific points raised by Markhurd arguably concerns a failure to meet definitive responsibility criteria. The RFQ required the use of jet-powered aircraft. It was amended by an October 23, 1982 telegram which advised:

"As a matter of clarification, the term 'jet-powered aircraft' as used in the RFQ documents refers to a pure jet-powered aircraft, and not a prop-jet, turbo-prop or similarly configured aircraft. Any offeror proposing to use other than a pure jet aircraft for provision of the required contract services will be considered nonresponsive."

Article 11 of the RFQ read as follows:

"11. REQUIREMENTS FOR FLIGHT PERSONNEL

The Contractor shall use only experienced flight personnel. The pilots shall have logged a minimum of 800 hours on aerial photography missions and the cameraman shall have logged a minimum 400 hours on similar missions."

Markhurd contends that the October 23 amendment indicates that the minimum experience levels listed in Article 11 must be in pure jet-powered aircraft and that Teledyne will not satisfy that requirement.

Initially, we do not agree with Markhurd's contention that the minimum crew experience levels in Article 11 must be satisfied in pure jet-powered aircraft. While a jet-powered aircraft is to be used in performing the contract, the experience requirements in Article 11 clearly relate to hours in aerial photography missions, not to hours flying any particular type of airplane.

Even if we agreed with Markhurd that Article 11 requires experience in jet-powered aircraft, based on the wording of Article 11 and its context within the RFQ we cannot conclude that the minimum personnel experience requirements in Article 11 are definitive responsibility criteria. Definitive responsibility criteria are special standards of responsibility, compliance with which is a necessary prerequisite to award. Biospherics, Inc., B-203419, December 31, 1981, 81-2 CPD 518. Article 11, however, is worded prospectively--"contractor shall use"--indicating that the crew experience requirements are contract performance specifications, not responsibility criteria. In fact, we note that while the RFQ does require certain information to be included in a response, the experience of the crew the bidder is proposing to employ is not required.

Finally, Markhurd offers information which it contends indicates that Teledyne may not perform the contract properly. Nonetheless, it has been the consistent position of this Office that whether or not a contractor performs according to the solicitation specifications is a matter of contract administration, not reviewable under our bid protest procedures. Americar Rental and Leasing System, B-199406, July 16, 1980, 80-2 CPD 35. Therefore, whether Teledyne fulfills its contract obligations by, for example, employing personnel who have the required experience, is a matter for AID in administration of the contract and does not affect the validity of the award. Impact Instrumentation, Inc., B-198704, July 28, 1980, 80-2 CPD 75.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel